

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 22-01139-mg

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6 In the Matter of:

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8 CELSIUS NETWORK, LLC,

9

10 Debtor.

11 - - - - - x

12 CELSIUS NETWORK LIMITED, et al.,

13 Plaintiff,

14 v.

15 STONE, et al.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 One Bowling Green

20 New York, NY 10004

21

22 January 10, 2023

23 10:57 AM

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1 B E F O R E :

2 HON MARTIN GLENN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: KAREN CAPPIELLO

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1 HEARING re 22-01139-mg Celsius Network Limited et al v.
2 Stone et al Status Conference Using Zoom for Government.

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 CLERK: All right. Starting the recording for
3 January 10th, 2023 at 11:00 a.m. Calling 22-1139, Celsius
4 Network Limited et al. versus Stone et al. All right. For
5 the parties that have joined -- one person dropped off --
6 Kaila, if you could unmute and give your appearance, please.

7 MS. ZAHARIS: Hi. I'm actually not appearing
8 today. I'm just listening. I'm here for the Celsius
9 adversary proceeding.

10 CLERK: Right. So we'll be starting at 11:00. Is
11 Michael Stanley going to be speaking?

12 MS. ZAHARIS: I do not believe so. I actually
13 don't believe he'll be attending.

14 CLERK: Okay. Do you know if anyone from
15 Plaintiff's counsel is attending?

16 MS. ZAHARIS: Yes. They will be -- they will
17 likely be logging on closer to 11:00. I think they got the
18 memo that they don't need to join yet, but I do --

19 CLERK: Got you.

20 MS. ZAHARIS: But it will Mitch Hurley, Dean
21 Chapman, and Lizzie Scott.

22 CLERK: Okay. Great. Thank you.

23 MS. ZAHARIS: Apologies for being quite early.

24 CLERK: No problem. No problem. All right. You
25 can pause the recording.

1 (Recording paused)

2 CLERK: All right. Mr. Hurley, if we could get
3 your appearance, please.

4 MR. HURLEY: Certainly. Mitch Hurley with Akin
5 Gump Strauss Hauer & Feld on behalf of the Plaintiffs,
6 Celsius Network and Celsius KeyFi.

7 CLERK: All right. Thank you. Mr. Chapman?

8 MR. CHAPMAN: Good morning. Dean Chapman of Akin
9 Gump Strauss Hauer & Feld for the Celsius Plaintiffs in the
10 Celsius versus Stone adversary proceeding.

11 CLERK: Okay. Thank you. Mr. Roche?

12 MR. ROCHE: Kyle Roche from Kyle Roche PA on
13 behalf of Jason Stone and KeyFi, Inc.

14 CLERK: Right. And Elizabeth Scott is going to
15 join in a moment, Judge.

16 THE COURT: Okay.

17 CLERK: Good morning, Elizabeth. If you could
18 unmute and give your appearance, -please.

19 MS. SCOTT: Good morning. Elizabeth Scott,
20 special litigation counsel on behalf of the Celsius
21 Plaintiffs.

22 CLERK: All right. Thank you. Judge, would you
23 like to start?

24 THE COURT: Yes, I would. Thank you very much and
25 good morning to everybody.

1 I wanted to update you all on a problem and see
2 how we'll deal with it. Unfortunately, my wife has COVID-19
3 and under the protocol that our court has adopted which is
4 essentially the district court protocol, I'm not permitted -
5 - I've -- as of yesterday, I was negative -- but I'm not
6 permitted to enter the courthouse, and so, you know, I
7 wanted to get your input. We can proceed in one of two
8 ways.

9 One is with me remote and that would still leave
10 questions whether you all should be in the courtroom and I
11 will have -- be able to observe and participate from home in
12 everything that goes on in the courtroom. So you will each
13 be able to cross-examine witnesses in front of you rather
14 than on a Zoom screen.

15 And the other alternative which is a difficult one
16 for me is moving the hearing dates. My calendar is
17 extremely crowded over the next month or so. I've looked at
18 it and I would have to move some matters around, but the
19 alternative that I see as available with moving some things
20 around would be for -- and we set aside two days for this.
21 I don't know in light of your, you know, narrowing, you
22 know, exhibits and -- whether you still need -- feel you
23 need two days, but Wednesday, January 25th, Thursday,
24 January 26th and Friday, January 27th are really the first
25 dates that I -- with moving things around, I could make

1 myself available.

2 So those, unfortunately, are the alternatives that
3 we face right now. Needless to say, it's not what I had
4 hoped for but, you know, under the current protocol, I can't
5 enter the courthouse. The earliest -- assuming that I
6 continue to test negative, the earliest I could enter the
7 courthouse is next week.

8 MR. ROCHE: Your Honor, this is Kyle Roche for
9 Defendants. Our preference would be to go forward tomorrow
10 and have Your Honor appear remote.

11 THE COURT: Mr. Hurley?

12 MR. HURLEY: Your Honor, first of all, I hope your
13 wife feels better soon and I hope you don't come down with
14 it. So, you know, I think we probably would be okay either
15 way. I mean, we did talk about the -- kind of importance of
16 assessing credibility in this case.

17 THE COURT: I agree with that.

18 MR. HURLEY: So that's the only thing that makes
19 me hesitate at all. So -- but certainly, if the Court has a
20 preference, we will be guided by that.

21 THE COURT: I don't have a preference other than
22 that because, you know, in the preparation I've done to this
23 point, credibility does seem to be quite important, and for
24 that reason, if the trial goes forward over the next few
25 days, it's my strong preference that you all be together so

1 that we have in effect live cross-examination.

2 The technology that we have in my courtroom will
3 certainly allow me to have full screen of the witness. What
4 I would do is -- I have all of your exhibits and I will use
5 a second computer with the exhibits on it so that -- I don't
6 want you sharing the screen. The problem with sharing the
7 screen is I wind up with a very small image of the witness.
8 I want to be able to view -- have a full view of whoever is
9 testifying, and I am able to do that. It will be a little
10 odd. You'll be looking at an empty judge's chair.

11 I would have my law clerks in the courtroom during
12 the hearing, but because obviously credibility from both
13 sides' standpoint is a key factor here, I do want you all in
14 the same room. I don't know whether Akin Gump has a -- you
15 know, the other alternative -- some firms have mute
16 courtrooms in their offices. I don't know whether Akin does
17 or not. One place or another, I want you all together.

18 MR. HURLEY: We don't have mute courtroom. We
19 have conference space, certainly, that has some technology,
20 but I know that my team has been down to court already and I
21 think it's been pretty happy with the technology that's in
22 the courtroom. So I'm not sure that we're going to be able
23 to match that at Akin on short notice.

24 THE COURT: That would be then -- you'd all be in
25 the courtroom and, you know, you will -- I think you should

1 be able to see me on the screen -- on one of the screens.
2 There are large screens in the courtroom, and I will --
3 assuming we go forward -- I mean, I had a conversation
4 yesterday with the clerk -- chief deputy clerk of the court.
5 Obviously, I've talking with my law clerks. This is all
6 just really come up in the last few days, obviously, but --
7 so I did have the discussion and it seemed to me -- again, I
8 had tried to see whether there were dates that I could cut
9 out for -- you know, carve out for next week and that just
10 wasn't feasible. There's some other Celsius hearings and
11 other things.

12 MR. HURLEY: I'm actually gone next week. I'm in
13 another state.

14 THE COURT: Okay.

15 MR. HURLEY: To answer your questions, Your Honor,
16 my belief is that this is a one-day hearing.

17 THE COURT: Okay.

18 MR. HURLEY: If that is any help. I wonder if it
19 makes sense for me and Mr. Roche to confer briefly and come
20 back to you with a final conclusion on where we stand.

21 THE COURT: Sure.

22 MR. HURLEY: Would that work?

23 THE COURT: Yeah. So let me ask this now and --
24 what I've been trying to focus on is, what's the area of
25 continued disagreement between you as to what relief the

1 Debtor should be entitled to. Let me hear from you first,
2 Mr. Hurley.

3 MR. HURLEY: Yes. So the primary thrust --
4 remaining thrust -- of our motion is that Celsius is seeking
5 an injunction -- a status quo injunction -- requiring that
6 the assets that we maintain were misappropriated from the
7 Celsius wallets and the proceeds of those assets will not be
8 further dissipated or transferred so that they'll still be
9 there as at the end of the case if Celsius prevails. And
10 that's the primary thing -- my understanding -- that the
11 Defendants disagree with. They don't -- they want to be
12 able to continue to use those assets.

13 We also have asked the Court to limit the
14 Defendants use of things like Tornado Cash. Right now, you
15 can't use Tornado Cash, obviously, because it's been banned.
16 But also any other kind of mixer that would allow the
17 Defendants to conceal the destination of transfers. That's
18 important to us, but it's sort of the secondary, I guess,
19 branch of relief that still remains. The main one is the
20 freezing of the assets during the course of the case.

21 THE COURT: All right. Mr. Roche.

22 MR. ROCHE: Yes. I think Mr. Hurley fairly
23 accurately summarizes the remaining dispute. Essentially,
24 the core contention is that the transfers at issue here were
25 authorized. Celsius on one hand for -- an affidavit

1 submitted by Mr. Mashinsky claims that the transactions at
2 issue were unauthorized. We claim the transactions were
3 authorized as part of the compensation owed to KeyFi under
4 the asset purchase agreement entered into on January 11th,
5 2021.

6 That's the core issue. We oppose the relief
7 requested -- the status quo -- on a separate ground. That
8 is, as part of the asset purchase agreement, the only assets
9 left with KeyFi were the assets that are issue. If a status
10 quo injunction were entered, that would leave KeyFi without
11 the ability to defend itself and pay legal fees. We -- the
12 assets that, you know, we worked as Your Honor is well aware
13 -- we've worked over the past couple weeks to give as
14 detailed of a mapping as we're capable of concerning the
15 assets -- where the assets were two years ago and where the
16 assets are now.

17 The parties -- Defendants -- don't plan on moving
18 the assets except to pay for expenses as they arise and for
19 -- KeyFi is continuing to use the assets to earn interest in
20 the -- as one does in the decentralized finance space and so
21 they do not believe it's appropriate given the standards for
22 preliminary injunction for Celsius to be entitled to, one,
23 those activities to stop, and two, for those assets to no
24 longer be available to pay for costs and fees in this case.

25 MR. HURLEY: Your Honor, I didn't understand you

1 to be asking for argument. I obviously have some responses
2 to what Mr. Roche just said. I'm happy to --

3 THE COURT: No. I understand. I'm not looking
4 for the argument. It looked from what I reviewed, the --
5 what Mr. Roche just raised about using assets to fund the
6 defense of the action -- I understood that as part of -- one
7 of the things they wanted to continue to do. I don't know
8 whether you've tried to reach -- and I certainly understand
9 if you haven't done it, Mr. Hurley -- that is, whether you
10 can reach an agreement on a permissible budget as to how
11 much you would permit to be used and -- rather than proceed
12 with the preliminary injunction, you could seek to agree to
13 an expedited schedule to permit, you know, a final
14 adjudication of the matter which would include a final
15 injunction and whatever other relief you're seeking.

16 I'm not pushing it. I'm just inquiring.

17 MR. HURLEY: Let me respond in two ways. First,
18 there is substantial case law that we'll citing to Your
19 Honor that under circumstances like these where the amount
20 in question seeking to enjoined is amount that the Plaintiff
21 believes that he has an equitable interest in and is the
22 amount that is the subject of the action that a defendants
23 plea that the injunction be refused because they want to use
24 those assets to pay their own legal fees should be rejected,
25 but having said that, after the last call, we did as you

1 asked and we had another discussion about potential
2 settlement. Without getting into the details, you know, we
3 discussed the possibility of various routes to avoiding the
4 hearing and we were not in the same ballpark.

5 THE COURT: Okay. That's fine. All right. All
6 right. Let's plan on going forward tomorrow. I will work
7 our tech people this afternoon to try and firm up how the
8 technology will work. I mean, from your standpoint, other
9 than looking at an empty chair in front of you, I think it
10 will operate in the ordinary way.

11 Let me ask, who are the live witnesses who I will
12 hear from? First Mr. Hurley.

13 MR. HURLEY: Alex Mashinsky and Patrick Holert.

14 THE COURT: Okay. Mr. Roche?

15 MR. ROCHE: Jason Stone and Connor Nolan.

16 MR. HURLEY: And, Your Honor, we had discussed the
17 possibility of me and Mr. Roche conferring once before
18 finalizing whether we're going to proceed tomorrow. Is that
19 still something that --

20 THE COURT: Sure. Why don't you do that. I will
21 -- I'll be touch. You know, I'm going to speak with the
22 clerk and the chief deputy clerk and some of the tech people
23 to make sure -- and as I say, I did talk yesterday about it
24 we went through a scenario that this would go forward with
25 me not in the judge's chair. But as I said, I will have the

1 exhibits on a separate computer, and so what you'll need to
2 do is -- and I think I have them organized in separate
3 directories -- Plaintiff -- and then directories so you'll
4 just have to be sure to call out which exhibit and give me
5 just a chance to find it on the computer.

6 It shouldn't be -- I've done the -- I mean, I've
7 had several trials during the pandemic and they actually
8 worked reasonably well and what I did in those was I used
9 multiple computers again, and they were completely remote --
10 people weren't in the courtroom -- but they were completely
11 remote, but I used to avoid the sharing of the screen,
12 because I want to see the witness, using multiple -- I had
13 multiple computers. I had the exhibits. It worked pretty
14 well so I've done this before and (indiscernible) you'll all
15 be in the courtroom.

16 MR. HURLEY: And we'll speak hopefully immediately
17 after this and we'll get back to you within (indiscernible)
18 an hour.

19 THE COURT: Why don't you -- you can call my law
20 clerk Daniel Slemmer. You can email him and then he'll be
21 in touch with me and let me know. As I say, when I looked
22 at the calendar, realistically, the first dates -- and it
23 would require some juggling of other things on the calendar
24 but I concluded I could do that -- would be Wednesday,
25 Thursday, Friday, January 25 through the 27th and I'm not

1 expecting it's going to take three days. But those were the
2 days that I could -- because I like to do things consecutive
3 days. I don't like two hours here or an hour there, you
4 know. I like to hear things from start to finish.

5 So why don't you -- why don't the two of you
6 confer and let Mr. Slemmer know and he'll promptly let me
7 know. Okay?

8 MR. ROCHE: Okay. Can I raise one thing while we
9 have you here, Your Honor?

10 THE COURT: Absolutely.

11 MR. HURLEY: Okay. So in the event that the trial
12 does go forward tomorrow, it relates to the exhibits. On
13 January 4th, the parties exchanged exhibit lists
14 (indiscernible) the Court's instruction and last night,
15 quite late, around 11:00, the Defendants asked to add I
16 think 12 new exhibits to the list. Some of the exhibits are
17 exhibits that we did not produce until -- we being Celsius -
18 - didn't produce until December 29th. But that's -- but
19 they were not a part of the expedited discovery that Your
20 Honor allowed and that the parties agree to.

21 We produced everything in that expedited round,
22 you know, on time. Then we continued with plenary discovery
23 and made a production on December 19th. So of the materials
24 that they've asked to add to the exhibit list last night --
25 first of all, one of the documents we produced with the

1 expedited stuff back on December 16th I think and it's a
2 spreadsheet with 9,000 lines in it.

3 And then are some materials that they've -- that
4 are public. There's some tweets and some Etherscan
5 printouts and all of those things we I guess would submit --
6 it's too late to add them to the exhibit list. I mean, I
7 don't know about substantively but we've done a lot of prep
8 already and to have a whole bunch of new exhibits put on us,
9 you know, 24 hours before the hearing is problematic.

10 And then remainder are from the December 29th
11 production and I guess with respect to those, again, we'd
12 just submit that, you know, there was some time to identify
13 them and put them on the list and we haven't seen them and
14 it's just too late. My understanding, Your Honor, was that
15 when you instructed us to engage in expedited discovery, the
16 instruction to both sides was, figure out what you think you
17 need, ask for it on a expedited basis, and that's what
18 you're going to rely on at the hearing. And Mr. Roche did
19 that. Celsius did that.

20 We exchanged expedited discovery and those
21 materials were available in plenty of time to put on exhibit
22 lists and to supplement it now, we submit, it would be
23 inconsistent at least with our understanding of the exercise
24 back on November 23rd and gives us very little time to
25 review the new exhibits and prepare.

1 THE COURT: Mr. Roche, let me give you a chance to
2 respond.

3 MR. ROCHE: Yes, Your Honor. The number of
4 exhibits we're talking about is 12 exhibits. Your Honor did
5 say that we did not need to put impeachment exhibits on the
6 exhibit list and while there are a few that we did add that
7 were produced as part of the initial document exchange as
8 we've been preparing over the past week and given the
9 holiday crunch, we would respectfully submit that, given the
10 limited number, we should have those on the list and
11 especially because at least a few of the exhibits were not
12 produced until after the parties exchanged and we do believe
13 are highly relevant to both, you know, the credibility
14 determinations that Your Honor has to make and are relevant
15 for the underlying issues at the heart of this hearing.

16 THE COURT: All right. How many of the documents
17 were produced after December 29th of the ones that --

18 MR. HURLEY: None were after December 29th, Your
19 Honor. The later produced documents were produced on
20 December 29th and they were not a part of the expedited
21 discovery process. They were just part of our regular
22 rolling production.

23 THE COURT: Well, look, here -- I'm going to
24 permit Mr. Roche to add them to his list. They need to be
25 marked. I need to get them. I'm going to reserve any

1 decision whether I'm going to permit them to be used. In
2 part, it's going to depend on for purpose they're being
3 used. Are they being used for impeachment which didn't have
4 to be included, and I'll just reserve decision.

5 You know, for present purposes and preparing, Mr.
6 Hurley, you ought to assume they'll come in. I don't know
7 if they will or they won't, but I'm going to permit them to
8 be added to the list. Just make sure, Mr. Roche, that we
9 get them because I won't be in the courtroom and so I need
10 to get them today.

11 MR. ROCHE: Understood, Your Honor. We will send
12 those over as soon as possible. I guess to the -- I believe
13 these are all the impeachment exhibits we planned to use.
14 To the extent we have any other impeachment exhibits, given
15 that Your Honor won't be in the court, how would you like us
16 to handle that in the hearing?

17 THE COURT: You ought to email copies of the
18 impeachment exhibits to my law clerk Mr. Slemmer who can
19 send them to me.

20 MR. ROCHE: Understood.

21 THE COURT: And you should have copies, obviously,
22 in the courtroom available for Mr. Hurley and his colleagues
23 as well. But I -- you know, I need -- so I need electronic
24 copies of them, in other words, so you need to -- if they're
25 pdfs or -- get them to Mr. Slemmer. He'll get them to me.

1 MR. ROCHE: Understood. So we would submit those
2 to Your Honor ex parte?

3 THE COURT: Yes, you will. Yes.

4 MR. ROCHE: Understood.

5 THE COURT: Okay. And, you know, we'll see
6 whether they come in and if they do, they do. So they ought
7 to be pre-marked and you'll provide them to Mr. Slemmer who
8 can provide them to me. And it's ex parte because they're,
9 you know -- we'll see whether they -- for what purpose they
10 come in. Not all impeachment exhibits come in where the
11 truth of the matter's asserted, but we'll have to deal with
12 that tomorrow during the hearing.

13 MR. ROCHE: Understood. One final point, Your
14 Honor, that's I guess related to the reasons Your Honor
15 called this hearing. One of our team members was in close
16 proximity to somebody who has been diagnosed with COVID.
17 We're following the procedures and the guidelines that the
18 court has set. That member will be wearing an N95 mask
19 tomorrow, will take a test today to ensure that they're
20 negative ahead of tomorrow's hearing and -- I wanted to --
21 while we're discussing it, if Your Honor has any other
22 guidelines given the situation, we're happy to follow them.

23 THE COURT: So having looked at the protocol again
24 yesterday, you know, it draws a distinction between someone
25 who's been in close contact but doesn't reside with the

1 person who is -- I have the situation. I obviously reside
2 with my wife and the protocol in that instance says, don't
3 enter the courthouse. Mr. Hurley, I don't know whether you
4 want to respond to this. I mean, I -- consistent with the
5 protocol, if someone has had limited contact with someone
6 but is still testing negative, I think they're permitted in
7 the courthouse -- in the courtroom.

8 MR. HURLEY: Perhaps Kyle and I can discuss it
9 when we talk after this and I'll get some more details, but
10 I'm sure we can work something out.

11 THE COURT: That's fine. Okay. All right. Sorry
12 for this snafu but we will go forward. Okay?

13 MR. HURLEY: Thank you, Your Honor.

14 THE COURT: Thanks very much.

15 MR. ROCHE: Thank you, Your Honor.

16 THE COURT: All right. We're adjourned.

17 CLERK: All right. Please stop --

18 (Whereupon these proceedings were concluded.)
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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: January 12, 2023